

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-4880-SB-2015 (O&M)
Date of Decision: 25.04.2016

Paramjit Kaur @ Leelo and another

...Appellant(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the digest? Yes/No

Present: Mr. G.S. Nahel, Advocate
for the appellants-appellants.

Mr. K.S. Aulakh, A.A.G., Punjab,
counsel for the respondent-State.

ANITA CHAUDHRY, J.

1. The appellants have been convicted under Sections 363, 366-A and Section 120-B IPC by the Additional Sessions Judge, Tarn Taran and were sentenced to undergo rigorous imprisonment for a period of 5 years along with fine of Rs.2,500/- both under Sections 363 and 366-A IPC. In default of payment of fine, they were to further undergo simple imprisonment for a period of 6 months. They were also sentenced to rigorous imprisonment for a period of 6 months for commission of offence under Section 120-B IPC. All the sentences were directed to run concurrently.

2. In a complaint made by Gurbal Kaur FIR, No.20 was registered on 17.03.2015 at Police Station Khalra. The complainant had three daughters. Manjit Kaur, Kuldeep Kaur and Ramanjit Kaur was the youngest. Randhir Singh resident of Bhikhiwind and his

associate Gurpreet were on visiting terms and were known to them. 5 – 6 months prior to the incident Paramjit Kaur @ Leelo accused, sister of Randhir along with Harpreet Kaur @ Happy and Ratni came with a matrimonial proposal for her daughters Kuldeep Kaur and Ramanjit Kaur for Randhir and Gurpreet. They also disclosed that they were in love with each other. The complainant did not accept the offer and said that Randhir was already married and had children and her younger daughter was a minor. She did not approve the offer. She had also explained that her elder daughter was still unmarried and she would marry of the eldest daughter first. The allegations are that Paramjit Kaur and Harpreet Kaur did not relish the refusal and left the house saying that she was a stumbling block. In the intervening night of 7th and 8th March, 2015 the family was asleep. The neighbours had gone to Hola Mohala function. In the morning, when they got up, they found both the girls missing. They also found that cash of Rs.1 lac and some jewellery had been taken away. Allegations were that it was taken away by the accused. The complainant had further alleged that Paramjit Kaur and Harpreet Kaur in connivance with Randhir and Gurpreet had kidnapped the daughters on the pretext of marriage.

3. The police registered the FIR, however, they failed to arrest Randhir Singh and Gurpreet Singh. They were declared proclaimed offenders. The police arrested Paramjit Kaur and Harpreet Kaur.

4. Challan was presented against both the accused and charge was framed under Section 363, 366-A & 120-B IPC. The accused pleaded not guilty.

5. The prosecution examined Gursahib Singh – PW1 who deposed that both the girls were kidnapped in the intervening night of 7th and 8th March, 2012 and the complainant had told him about the kidnapping and they had tried to trace the girls but could not be recovered. He stated that the girls were taken by Dhira and Gurpreet who were proclaimed offenders. He stated that he did not know the accused who were present in the Court.

The star witness for the prosecution was Gurpal Kaur – PW6 who failed to support the prosecution story. She stated that she did not name anyone to the police and she did not know who had kidnapped the daughters. She denied that Paramjit Kaur and Harpreet Kaur had kidnapped the girls or they had helped Gurpreet and Randhir in the kidnapping. She stated that she did not make that statement before the police. The witness was confronted with her statement Ex.PA made before the police, but she denied having made the statement or even thumb marking the same. In the cross-examination, she stated that she did not know Paramjit Kaur or Harpreet Kaur.

The remaining witnesses were formal witnesses namely SI Darshan Singh – PW2 who had recorded the statement of Gurpal Kaur. He had collected the certificates. ASI Sahib Singh – PW3 stated that he had received information that Paramjit Kaur and Harpreet Kaur were waiting at a bus stand and a raid was conducted and they were arrested. Rajwant Kaur – PW4 and Hazara Singh – PW5 were present at the time of arrest of the appellants. The prosecution evidence was closed by Court order on 26.08.2015.

6. In the statement recorded under Section 313 Cr.P.C., both of them abjured the trial and pleaded false implication. However, no evidence was led in defence.

7. There was absolutely no incriminating evidence against the appellants so as to record the statement under Section 313 Cr.P.C. It is indeed surprising that the trial Court has convicted the appellants solely on the statement made before the police. The trial Court was of the view that Gursahib Singh – PW1 had stated to the police in his statement made under Section 161 Cr.P.C. that Gurpal Kaur had made a statement before him and the complainant had accused both the appellants in her complaint. The Court was of the view that the Investigating Officer had also deposed that the complainant in the presence of Gurpal Singh had made a statement, therefore, it was sufficient to record a conviction.

8. The Court recorded a finding that the informant had raised her voice against the disappearance of the minor daughters and it was proved beyond doubt that the minors had been removed out of the lawful guardianship of the complainant and the father without their consent and it was done in connivance with Randhir Singh and Gurpreet Singh who were proclaimed offenders. It assumed that the accused (facing trial) had knowledge that the girls would be forced into illicit intercourse with the co-accused. It highlighted the aspect that the girls had still not been recovered.

9. This is a case of no evidence. The complainant had not supported the prosecution version at the trial. She did not say that the girls had been kidnapped by the appellants. It got

swayed probably because the girls could not be recovered. The accused could not have been convicted solely on the complaint made to the police. Neither PW1 nor the complainant had said a word against the appellants. The evidence of PW1 was hearsay, which could not have been accepted. It could not be accepted to record a conviction. The appellant could not have been convicted on the statement made under Section 161 Cr.P.C. or what was narrated in the complaint given to the police. The Court cannot suo moto use the statement to the police which had not been proved. The Court could have used the statement if they were duly proved as required under Section 162 Cr.P.C. The statement given to the Investigating Officer can only be used for contradiction but only after strict compliance of Section 145 of the Evidence Act. It is a case of no evidence. The statements made to the police under Section 161 Cr.P.C. could not have been used to convict the appellants. The appellants have been convicted without there being any evidence against them. The appeal accepted. The appellants be released forthwith in this case if not required in any other case.

(ANITA CHAUDHRY)
JUDGE

25.04.2016
sunil